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11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

13 TELEDYNE TECHNOLOGIES INC., a) Case No. CV 06-06803
14 Delaware corporation,)

15 Plaintiff,)
16 vs.)

Assigned to: Hon. Margaret M. Morrow

17 HONEYWELL INTERNATIONAL)
18 INC., a Delaware corporation,)

**HONEYWELL'S MARKMAN
OPENING BRIEF**

19 Defendant.)

20 HONEYWELL INTERNATIONAL)
21 INC. and HONEYWELL)
22 INTELLECTUAL PROPERTIES INC.,)
a Delaware corporation,)

Date: January 28, 2008
Time: 9:00 a.m.
Place: Courtroom 780

23 Counterclaimants.)

24 vs.)

25 TELEDYNE TECHNOLOGIES INC., a)
26 Delaware corporation,)

27 Counterdefendant.)
28

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	LEGAL STANDARDS FOR CLAIM CONSTRUCTION	2
III.	CONSTRUCTION OF CLAIMS.....	4
A.	The ‘990 Patent	4
1.	”Landing,” “When,” “Upon,” “Automatically” and “In Response To”	5
2.	“Flight Data,” “Data Acquisition Unit” and “Flight Operations Center” Bear Particular Meanings To Persons Skilled In the Art	11
3.	The Patent Expressly Defines Cellular Infrastructure	14
4.	“Serial Card” and a “Plurality of Cell Channels in Communication With Said Serial Card” Require Multiple Cellular Modems	15
5.	“Means for Transmitting”	16
6.	Claim 25 (“Threads”)	17
B.	The ‘152 Patent.....	19
1.	First and Second Communication Mediums.....	20
2.	Aeronautical Satellite System / Direct Broadcast Satellite	20
3.	Terms That Should Be Given Their Plain Meaning.....	22
C.	The ‘468 Patent	22
1.	“Vehicle Server” & “Component”	22
2.	Terms That Should Be Given Their Plain Meaning	24
IV.	CONCLUSION	25

TABLE OF AUTHORITIES

CASES

<i>Agfa Corp. v. Creo Products Inc.</i> , 451 F.3d 1366 (Fed. Cir. 2006)	4
<i>Biomedino, LLC v. Waters Techs. Corp.</i> , 490 F.3d 946 (Fed. Cir. 2007)	6, 16
<i>CCS Fitness, Inc. v. Brunswick Corp.</i> , 288 F.3d 1359 (Fed. Cir. 2002)	3, 15
<i>Elektia Instrument S.A. v. O.U.R. Scientific Int'l</i> , 214 F.3d 1302 (Fed. Cir. 2000)	8
<i>Ethicon Endo-Surgery, Inc. v. United States Surgical Corp.</i> , 93 F.3d 1572 (Fed. Cir. 1996)	11
<i>Exxon Chemical Patents, Inc. v. Lubrizol Corp.</i> , 64 F.3d 1553 (Fed. Cir. 1995)	11
<i>Harris Corp. v. Ericsson Inc.</i> , 417 F.3d 1241 (Fed. Cir. 2005)	16, 17
<i>Ill. Tool Works, Inc. ex rel. Simco Div. v. Ion Systems, Inc.</i> , 250 F.Supp.2d 477 (E.D. Pa., 2003)	10
<i>KSR Int 'l Co. v. Teleflex Inc.</i> , 127 S. Ct. 1727, 167 L. Ed. 2d 705 (2007)	5
<i>MercExchange, LLC v. eBay, Inc.</i> , 401 F.3d 1323 (Fed. Cir. 2005)	10
<i>Netword LLC v. Centraal Corp.</i> , 242 F.3d 1347 (Fed. Cir. 2001)	2
<i>Old Town Canoe Co. v. Confluence Holdings Corp.</i> , 448 F.3d 1309 (Fed. Cir. 2006)	4
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005), <i>cert. denied</i> , 546 U.S. 1170, 126 S. Ct. 1332, 164 L. Ed. 2d 49 (2006)	2, 3, 4
<i>PODS, Inc. v. Porta Stor, Inc.</i> , 484 F.3d 1359 (Fed. Cir. 2007)	5
<i>Schoenhaus v. Genesco, Inc.</i> , 440 F.3d 1354 (Fed. Cir. 2006)	11
<i>Southwall Techs., Inc. v. Cardinal IG Co.</i> , 54 F.3d 1570 (Fed. Cir. 1995)	3

1	<i>SuperGuide Corp. v. DirecTV Enterprises, Inc.</i> ,	
2	358 F.3d 870 (Fed. Cir. 2004)	10
3	<i>Thomson Consumer Elecs., Inc. v. Innovatron, S.A.</i> ,	
4	43 F. Supp.2d 26 (D. D.C. 1999)	8
5	<i>U.S. Surgical Corp. v. Ethicon, Inc.</i> ,	
6	103 F.3d 1554 (Fed. Cir. 1997)	2, 8
7	<i>Union Pac. Res. Co. v. Chesapeake Energy Corp.</i> ,	
8	236 F.3d 684 (2001)	18
9	<i>Vitronics Corp. v. Conceptronic, Inc.</i> ,	
10	90 F.3d 1576 (Fed. Cir. 1996)	2, 3
11	<i>White v. Dunbar</i> ,	
12	119 U.S. 47, 7 S. Ct. 72, 30 L. Ed. 303 (1886)	1

OTHER AUTHORITIES

13	AVIATION ELECTRONICS GLOSSARY (2005)	13
14	MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY: 10th Ed., 1997	6
15	MICROSOFT PRESS COMPUTER DICTIONARY: 3rd Ed., 1997	23
16	MODERN DICTIONARY OF ELECS: 7th Ed., 1999	14, 16
17	THE ALLIEDSIGNAL GLOSSARY OF AVIONICS TERMS & ACRONYMS 1998	12
18	THE AUTHORITATIVE DICTIONARY OF IEEE STANDARD TERMS 2000	16, 23
19	The IEEE DICTIONARY OF ELEC. AND ELEC. TERMS: 6th Ed., 1996	18
20	THE OXFORD ENGLISH DICTIONARY: 2nd Ed., 1989	6, 8, 11
21	WEBSTER'S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED: 2nd	
22	Ed., 1979	19

REGULATIONS

23	14 C.F.R. §§ 121.703(b), 135.415(b), 1415(b)(2007)	6
24	35 U.S.C. § 112(6)	6

I. INTRODUCTION

The words of the claims define the metes and bounds of a patent. And it is a cardinal rule of claim construction that those boundaries may not be expanded by contorting the plain and unambiguous language of a claim. As the United States Supreme Court held long ago:

Some persons seem to suppose that a claim in a patent is like a nose of wax, which may be turned and twisted in any direction, by merely referring to the specification, so as to make it include something more than, or something different from, what its words express. The context may, undoubtedly, be resorted to, and often is resorted to, for the purpose of better understanding the meaning of the claim; but not for the purpose of changing it, and making it different from what it is. The claim is a statutory requirement, prescribed for the very purpose of making the patentee define precisely what his invention is; and it is unjust to the public, as well as an evasion of the law, to construe it in a manner different from the plain import of its terms.

White v. Dunbar, 119 U.S. 47, 51-52, 7 S. Ct. 72, 74-75, 30 L. Ed. 303, 305 (1886).

True to this mandate and throughout the 38 asserted patent claims¹, when everyday words confront the parties, Honeywell proposes that no construction is necessary. Words such as “when,” “upon,” “automatically” and “landing” mean what they say: when, upon, automatically, and landing.² Teledyne, on the other hand, urges the Court to graft onto these simple words meanings that violate established claim construction rules and plain English. Thus, to Teledyne, “when” and “upon” should mean “*after*”;

¹ Teledyne asserts ‘990 patent claims 1, 2, 4, 8, 14, 15, 18, 19, 20, 21, 25, 33, 34, 35, 37, 41, 44, 45, 46, 47 and 51 and Honeywell asserts ‘152 patent claims 1, 2, 3, 4, 5, 6, 7, 8, 10 and 11 and ‘468 patent claims 1, 2, 7, 9, 12, 13 and 15 (underlined text denotes independent claims).

² Stipulated Joint Claim Construction Chart, Honeywell’s Proposed Construction, Ex. A at 1-2, 4.

1 “automatically” should mean *semi-automatic*, involving a “little” “human
 2 involvement”; and “landing” should mean not just landing, but “*information*
 3 *associated with the aircraft having landed*.”³ This is improper. The boundaries of a
 4 patent cannot be altered by after-the-fact gyrations devised to capture territory that is
 5 nowhere within the patent’s unambiguous claim language.

6 7 **II. LEGAL STANDARDS FOR CLAIM CONSTRUCTION**

8 Claim construction defines, as a matter of law, the patented invention. *Netword*
 9 *LLC v. Centraal Corp.*, 242 F.3d 1347, 1352 (Fed. Cir. 2001). The process is one of
 10 law, for the Court to decide, *see id.* at 1350, and begins and ends with the language of
 11 the claims, *see Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005), *cert.*
 12 *denied*, 546 U.S. 1170, 126 S. Ct. 1332, 164 L. Ed. 2d 49 (2006) (a “bedrock
 13 principle” of patent law is that “the claims of a patent define the invention to which
 14 the patentee is entitled the right to exclude”); *Vitronics Corp. v. Conceptronic, Inc.*, 90
 15 F.3d 1576, 1582 (Fed. Cir. 1996). The words of a claim are generally given their
 16 ordinary and customary meaning, which is defined as “the meaning that the term
 17 would have to a person of ordinary skill in the art in question at the time of the
 18 invention.” *See Phillips*, 415 F.3d at 1312-13. However, where the proper scope and
 19 meaning of a particular claim term is clear and understandable to the jury without
 20 explanation, no claim construction is necessary and none should be given. *See U.S.*
 21 *Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997) (holding that
 22 claim construction is required only “when the meaning or scope of technical terms and
 23 words of art is unclear **and** in dispute **and** requires resolution to determine” the issue
 24 before the court).⁴

25 There is a “‘heavy presumption’ that a claim term carries its ordinary and
 26

27 ³ *E.g., id.*, Teledyne’s Proposed Construction, Ex. A at 1-2, 4.

28 ⁴ Unless otherwise indicated, all emphasis appearing in this brief has been added.

1 customary meaning.” *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366
2 (Fed. Cir. 2002). That presumption can only be overcome in the following four
3 situations: (1) where the patentee expressly redefined a claim term in either the
4 specification or prosecution history; (2) where the intrinsic record (*i.e.* the patent and
5 its prosecution history) shows that the patentee expressly disclaimed the scope of an
6 ordinary definition; (3) where the term chosen by the patentee has no ordinary
7 meaning and so “deprive[s] the claim of clarity” as to require resort to the other
8 intrinsic evidence for a definite meaning; and (4) where the patentee used means-plus-
9 function format (that is, the means to accomplish a function is described in the claims,
10 but the structure for the means is recited in the specification). *See id.* at 1366-67. It
11 therefore follows that the person of ordinary skill in the art is deemed to read claims in
12 the context of the “intrinsic evidence,” which includes the other patent claims,
13 specification, and prosecution history. *See Philips*, 415 F.3d at 1314-17.

14 Apart from the claim language itself, the patent specification is “the single best
15 guide to the meaning of a disputed term.” *Id.* at 1315 (quoting *Vitronics*, 90 F.3d at
16 1582). The patent’s prosecution history should also be consulted as part of claim
17 construction because it, too, may provide evidence of how the PTO and the inventor
18 understood the patent, and it limits the interpretation of claim terms “so as to exclude
19 any interpretation that was disclaimed during prosecution.” *Southwall Techs., Inc. v.*
20 *Cardinal IG Co.*, 54 F.3d 1570, 1576 (Fed. Cir. 1995); *see Phillips*, 415 F.3d at 1317.
21 Though claims are read in light of the intrinsic record, it is important to remember that
22 the intrinsic record may not alter the plain and ordinary meaning of claim language
23 absent one of the four reasons set forth above. *See CCS Fitness*, 288 F.3d at 1366
24 (accused infringer may not narrow claim term’s ordinary meaning “simply by pointing
25 to the preferred embodiment or other structures or steps disclosed in the specification
26 or prosecution history”).

27 Finally, and if need be, a court may consult evidence outside the intrinsic record
28 (“extrinsic evidence”) to educate itself about the relevant art and what a person of

1 ordinary skill in the art would understand claim terms to mean. *See Phillips*, 415 F.3d
 2 at 1319. The Federal Circuit has approved the use of general and technical
 3 dictionaries to help determine the ordinary meaning of a term. *See Agfa Corp. v. Creo*
 4 *Prods. Inc.*, 451 F.3d 1366, 1376 (Fed. Cir. 2006) (“The ordinary meaning of some
 5 claim terms ‘may be readily apparent even to lay judges, and claim construction in
 6 such cases involves little more than the application of widely accepted meaning of
 7 commonly understood words. . . . In such cases, general purpose dictionaries may be
 8 helpful.’”) (citing *Phillips*, 415 F.3d at 1314-19); *Old Town Canoe Co. v. Confluence*
 9 *Holdings Corp.*, 448 F.3d 1309, 1316 (Fed. Cir. 2006) (“The district court's reference
 10 to the dictionary was not an improper attempt to find meaning in the abstract divorced
 11 from the context of the intrinsic record but properly was a starting point in its
 12 analysis”). That said, even when a court chooses to consult such evidence, it must
 13 remain true to the intrinsic record and, in particular, the claim language. *See Phillips*,
 14 415 F.3d at 1319.

16 **III. CONSTRUCTION OF CLAIMS**

17 **A. The ‘990 Patent**⁵

18 The ‘990 patent relates to the use of “well known technology and the cellular
 19 infrastructure which is already in place” to transmit flight data from an airplane
 20 automatically upon landing of the aircraft and “over multiple parallel channels to
 21 achieve the necessary transmission bandwidth and achieve a low data transmission
 22 time.” (‘990 col.2 ll.6-12.) Long before Teledyne’s alleged invention, flight data
 23 acquisition was known, and so was the use of cellular systems to transmit acquired
 24 data automatically. As such, both during prosecution of the original application and,
 25 for many of the claims, during reexamination prosecution, Teledyne amended the

26 _____
 27 ⁵ For the Court’s convenience, Starr Decl., Exs. A and B are, respectively, a copy of the ‘990
 28 patent with the disputed claim terms highlighted, and Honeywell’s complete proposed claim
 constructions for the ‘990 patent with citations to the intrinsic record and to extrinsic evidence.

claims to overcome patentability rejections. These amendments resulted in most of the terms at issue here.⁶ To present the disputed terms efficiently and in keeping with the Federal Circuit’s presumption that claim terms should be construed consistently among the claims of a patent,⁷ Honeywell addresses each claim term issue-by-issue rather than claim-by-claim.

1. **”Landing,” “When,” “Upon,” “Automatically” and “In Response To”**

The claims of the ‘990 patent contain several variations of terms (hereinafter referred to as the “landing terms”) that limit their scope to a system in which flight data is automatically downloaded as soon as the plane lands. At the heart of the parties’ dispute on the construction of the landing terms is the meaning of five words or phrases that define the timing and nature of the trigger for the cellular communication of flight data: (1) *landing*, (2) *when*, (3) *upon*, (4) *automatically*, and (5) *in response to*. Specifically:

- Claim 1 requires that cellular communication is “initiated *when* a second sensor senses the *landing* of the aircraft”
- Claims 8 and 14 require cellular communication to be “initiated *automatically upon landing* of the aircraft”
- Claim 15 requires that cellular data transfer is “initiated *when* the sensing means sense the *landing* of the aircraft”
- Claims 18, 19 and 33 require a cellular infrastructure to be accessed “*in response to* a signal” “indicating *a landing* of the aircraft”

⁶ It bears mention that the reexamined patent issued under an obviousness standard that has since been significantly relaxed by the United States Supreme Court in *KSR Int ’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 167 L. Ed. 2d 705, 720 (2007) (holding that combination of “familiar elements according to known methods [to do] no more than yield predictable results” are obvious).

⁷ See *PODS, Inc. v. Porta Stor, Inc.*, 484 F.3d 1359, 1366 (Fed. Cir. 2007).

1 None of these terms require construction.⁸ They mean what they say.

2 (a) **Landing Means *Landing*, or “Touching Down”**

3 Teledyne urges that the “landing” of an aircraft means “information associated
4 with the aircraft having landed.”⁹ But that is not what the claim language states.
5 Landing means landing. Nothing in the ‘990 patent suggests, let alone dictates, the
6 meaning urged by Teledyne. On the contrary, it reinforces the common understanding
7 of the word. In particular, the patent explains that “a weight on wheels interrupt
8 [signal] signals that the aircraft *has landed*.” (‘990 col.3 ll.59-60.) A “weight-on-
9 wheels” interrupt signal is generated at the time that the wheels of the aircraft hit the
10 ground and begin bearing the weight of the craft. *See, e.g., THE NAT’L TRANSP. BD.,*
11 *NTSB INCIDENT REPORT IDENTIFICATION: CHI03IA070* (2005),
12 http://ntsb.gov.nts.gov/brief.asp?ev_id=20030220X00241&key=1 (“[T]he aircraft
13 touched down on a heading of 190 degrees at 124 knots . . . All three landing gear
14 Weight-on-Wheels (WOW) switches changed from Air to Ground within 0.25
15 seconds of each other.”).

16 Common dictionary definitions, as well, underscore that construction of
17 “landing” is not needed: landing means bringing to land, reaching the ground, or
18 “touching down.” *See* MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 654 (10th ed.
19 1997) (“An act or process of one that lands; esp: a going or bringing to a surface (as
20 land or shore) after a voyage or flight”); 7 THE OXFORD ENGLISH DICTIONARY 622
21 (2nd ed. 1989) (“1. To bring to land; to set on shore; to disembark. . . . 7b. *To alight*
22 *upon the ground . . . Esp. of an aircraft or spacecraft . . . to alight upon or reach*
23 *the ground*, or some other surface, after a flight.”); *accord* 14 C.F.R. §§ 121.703(b),
24 135.415(b), 1415(b)(2007) (“during flight means the period from the moment the
25 aircraft leaves the surface of the earth on takeoff until it *touches down on landing*.”)

26 ⁸ Claim 15, as a whole, requires additional construction because Teledyne invokes 35 U.S.C. §
27 112(6). *See Biomedino, LLC v. Waters Techs. Corp.*, 490 F.3d 946, 950 (Fed. Cir. 2007).

28 ⁹ Stipulated Joint Claim Construction Chart, Ex. A at 1.

1 Again, “landing” means landing. Should the Court deem additional construction
 2 appropriate, Honeywell proposes that “landing” be construed as “touching down.”

3 **(b) “When” and “Upon” Need No Construction**

4 The asserted claims of the ’990 require that cellular communication be initiated
 5 *when* landing occurs. For example: claim 1 recites that communication is “*initiated*
 6 *when* at least the second sensor senses the landing”; claims 8 and 14 recite that
 7 communication “is *initiated automatically upon* landing”; claim 15 recites that
 8 “transmission of the data is *initiated when* the sensing means sense the landing”; and
 9 claims 18, 19, and 33 recite that the cellular “infrastructure is *accessed in response to*
 10 the signal” “indicating a landing.” These words mean what they plainly say, as
 11 underscored by the patent’s specification and prosecution history.

12 The specification states that the invention improves over the prior art precisely
 13 because the prior art transferred data *after* the aircraft landed:

14 It is also known to transmit data relating to an aircraft via a
 15 telephone system located in a terminal. Such a system, however,
 16 *requires that the aircraft be docked at the gate* before
 17 transmission begins, thereby *resulting in a substantial delay* in the
 18 transmission.

19 (’990 patent col.1 ll.46-51.) The specification’s sole disclosure of the mechanism for
 20 triggering the communication—“a weight-on-wheels signal, which acts as an interrupt
 21 signal ... to initiate transmission” also confirms that “when” the aircraft land means
 22 “when” and not “after.” (’990 col.3 ll.27-29.)

23 The prosecution history of the ’990 patent further supports that “when” means
 24 when, not after: Teledyne relinquished coverage for initiation of cellular transmission
 25 at some indiscriminate point after landing. During prosecution, the Examiner rejected
 26 Teledyne’s initial claims 1, 8, 14, 15, 18, 19 and 33, none of which contained the
 27 “upon landing” limitation for the initiation of cell transmission. In citing prior art (the
 28 Bailey reference, which disclosed cellular transmission of truck engine performance

1 data) against these claims, the Examiner stated that “data transmission occurring *after*
2 *the aircraft has landed* is in no way different from data transmission occurring in any
3 other land vehicle. An airplane is a land vehicle, traveling via wheels, once it is on the
4 ground.”¹⁰ To overcome these rejections, Teledyne inserted the phrase “wherein the
5 communication is initiated *automatically upon landing* of the aircraft” immediately
6 after the existing claim language, “after the aircraft has landed.”¹¹

7 This was an unmistakable surrender: “After the aircraft has landed” spans a far
8 greater temporal range than “upon landing,” and Teledyne gave up attempting
9 coverage of the former in exchange for coverage of the latter. *See Elekta Instrument*
10 *S.A. v. O.U.R. Scientific Int’l*, 214 F.3d 1302, 1308 (Fed. Cir. 2000) (“In view of these
11 statements from the examiner, a person of skill in the art would understand that the
12 term ‘to’ was changed to ‘between’ in order to respond to the examiner’s statement
13 and to distinguish the prior art by claiming exclusively the range of 30°-45°. We
14 therefore agree with OSI that claim 1 is susceptible of only one reasonable
15 construction, and is limited to gamma units with radiation sources located exclusively
16 between 30°-45°.”).

17 Again, dictionary definitions underscore that these common terms are plainly
18 understandable and need no construction. “When” means “at the (or a) time which;
19 on the (or an) occasion which,” and “The time at which something happens (or did or
20 will happen).” 20 THE OXFORD ENGLISH DICTIONARY, *supra*, at 209. “Upon” means
21 “on the occasion of,” “immediately after; following on,” “as soon as.” 19 *id.* at 301;
22 *see also Thomson Consumer Elecs., Inc. v. Innovatron, S.A.*, 43 F. Supp.2d 26, 36-38
23 (D. D.C. 1999) (construing both “when” and “upon” to mean “as soon as”)

24 In sum, the plain meaning of the “when” and “upon” limitations are sufficiently
25 clear that no construction is required under *U.S. Surgical*, 103 F.3d at 1568. Should
26

27 ¹⁰ ‘990 File History, 2/9/2000 Office Action at 3-4 (Starr Decl., Ex. D).

28 ¹¹ *Id.*, 7/10/2000 Amend. and Rsp. to Office Action at 1-5.

the Court decide that construction is needed, Honeywell proposes that “when” means “at the time” and “upon” means “on or immediately thereafter.”

(c) **“Initiated Automatically” Means Initiated Automatically, Not With A “Little ... Human Involvement”**

In claims 8 and 14, the cellular communication is not only initiated “upon landing,” but “automatically upon landing.” This claim term needs no definition: automatic means automatic. Nonetheless, Teledyne urges this Court to construe “automatic” not as automatic, but as semi-automatic: “initiated with *little or no* human involvement.”¹² The intrinsic record not only fails to support the dubious proposition that “automatic” means *a “little ... human involvement,”* but expressly rejects it. Though the specification refers to “little or no human involvement,” this passage of the specification does not refer to the automatic initiation of the flight data transfer, but to the aircraft data transmission system:

Thus, there is a need for an aircraft data transmission system that automatically transfers flight data from an aircraft to a flight operations center with little or no human involvement and which relies on a reliable wireless delivery system.

(‘990 col. 1, ll.55-59.)¹³

Moreover, the prosecution history confirms—directly contrary to Teledyne’s proposal—that automatic does not mean with a “little human intervention.” Faced with a prior art challenge (the Ross reference), Teledyne clearly and unmistakably surrendered *human or manual activation* to overcome that challenge:

Ross does teach communicating “altitude, air speed, and direction of the aircraft” from the aircraft to the flight control center 30 of

¹² Stipulated Joint Claim Construction Chart, Ex. A at 4-5.

¹³ Moreover, if “little or no human involvement” were a substitute for “automatic,” the term “automatic” would be redundant.

Ross. This communication, however, takes place *when the pilot manually activates* switch 15 of Ross in flight, *not*, “automatically upon landing of the aircraft,” as recited in claim 1.¹⁴

In short, “initiated automatically” requires no construction. Should the Court differ, then Honeywell proposes that they be construed to mean “initiated without human intervention.”

The Federal Circuit has considered this term often and repeatedly confirmed this definition. *See e.g., SuperGuide Corp. v. DirecTV Enters., Inc.*, 358 F.3d 870, 891-93 (Fed. Cir. 2004) (affirming construction of phrase “automatically electronically converting” as meaning “a change in form of the selected television program listings by an electronic means without further involvement of the system’s user”); *Ill. Tool Works, Inc. ex rel. Simco Div. v. Ion Systems, Inc.*, 250 F. Supp. 2d 477, 490 (E.D. Pa. 2003) (“The term ‘automatically adjusting’ shall mean: ‘changing at least one of the high voltage power supplies in a manner independent of external influence or control.’”); *see also MercExchange, LLC v. eBay, Inc.*, 401 F.3d 1323, 1338 (Fed. Cir. 2005) (claim limitations requiring actions by participants cannot be “automatically performed,” thus, e.g., claim step which requires that participants enter their bids manually cannot occur automatically).

(d) “In Response To” Also Means What It Says

“In response to” is yet another phrase that requires no construction: it means “in response to.” In context, this claim term requires that the cellular “*infrastructure is accessed in response* to the signal.” (‘990 claims 18-19, 33.) Teledyne’s proposed construction—“cellular communications infrastructure is only accessed after receiving the signal”¹⁵—offends the plain meaning of “in response to.” “In response” is a phrase that unambiguously imposes a *causal* limitation, which Teledyne is not free to

¹⁴ ‘990 Reexamination File History, 7/26/2005 Amend. And Rsp. To Office Action In Ex Parte Reexam. at 9 (Starr Decl., Ex. C).

¹⁵ Stipulated Joint Claim Construction Chart, Ex. A at 2, 7.

1 read out of the claims. *See, e.g., Schoenhaus v. Genesco, Inc.*, 440 F.3d 1354, 1358-
 2 59 (Fed. Cir. 2006) (rejecting argument to read limitation “rigid” out of claim); ;
 3 *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1582-83 (Fed. Cir.
 4 1996) (the patentee’s infringement argument “invites us to read [a] limitation out of
 5 the claim. This we cannot do.”) (citing *Exxon Chemical Patents, Inc. v. Lubrizol*
 6 *Corp.*, 64 F.3d 1553, 1557 (Fed. Cir. 1995)).

7 Indeed, Teledyne’s effort to rewrite “in response to” as “after” is at odds with
 8 English. 8 THE OXFORD ENGLISH DICTIONARY, *supra*, at 741 (response: “1.b. An
 9 action...which answers to some stimulus or influence; c. The way in which an
 10 apparatus responds to a stimulus.”).

11 12 2. “Flight Data,” “Data Acquisition Unit” and “Flight Operations Center” Bear Particular Meanings To Persons Skilled In the Art

14 All claims of the ’990 patent require transmission of “flight data” and a “data
 15 acquisition unit.” These are terms of art in the field of avionics. Honeywell’s
 16 proposed construction of “flight data”—“flight parameters such as air speed, altitude,
 17 vertical acceleration, heading, and time”¹⁶—is consistent with how both the patent and
 18 one of ordinary skill in the art define the term. In contrast, Teledyne’s proposal—
 19 “data relating to flight or performance of aircraft systems or components during
 20 flight”¹⁷—not only conflicts with the patent and usage in the art, but also contradicts
 21 Teledyne’s representations to the U.K. Patent Office concerning the ’990 patent. In
 22 prosecution of GB 2395634 B, a counterpart to Teledyne’s U.S. Pat. No. 6,915,189,
 23 Teledyne represented:

24 [I]n the ’990 patent, the data acquisition unit is limited to acquiring
 25 parametric data. The ’990 patent lacks any mention of or
 26

27 ¹⁶ *Id.* at 1.

28 ¹⁷ *Id.* at 1.

reference to acquiring **maintenance and diagnostic data** from internal equipment (other than data acquisition units). Moreover, in the ‘990 patent, the parametric data – not maintenance and diagnostic data - is transmitted. Clearly, the ‘990 patent does not teach, suggest or disclose receiving **maintenance and diagnostic data** from a plurality of **avionics and/or electronic engine control line replaceable units** and downloading such data ...¹⁸

The above representations accord with the ‘990 specification, which notes that the patent is directed to the acquisition and transmission of “flight data.” (‘990 col.1 l.16.) It explains, “It is common for aircraft to generate records of data relating to flight and performance parameters for each flight of the aircraft. The data typically relate to parameters such as air speed, altitude, vertical acceleration, heading, time, etc.” (‘990 col.1 ll.21-25.) Again, in Teledyne’s words, “[c]learly, the ‘990 patent does not teach, suggest or disclose” anything but Honeywell’s proposed construction; in view of Teledyne’s representations, it certainly does not envision that “flight data” can be construed to include maintenance and diagnostic data.

Teledyne’s proposed construction of “data acquisition unit”—“plain meaning or a hardware device for use on an aircraft that acquires data”¹⁹—similarly expands upon the meaning of this term of art in contradiction to the patent specification. In avionics, a “data acquisition unit” is a particular piece of equipment used to condition flight data so that it can be stored in the aircraft’s mandatory “black box” recorder. This piece of equipment is one and the same as a “flight data acquisition unit”—FDAU.²⁰ See THE ALLIEDSIGNAL GLOSSARY OF AVIONICS TERMS & ACRONYMS 23 (1998) (“The DFDAU samples, conditions and digitizes the flight data.”); AVIATION ELECS.

¹⁸ File History of U.K. Patent Application No. 0323990.2, Teledyne’s 1/4/2006 Rsp. to the U.K. Patent Office Examination Report at 2 (emphasis in original) (Starr Decl., Ex. E).

¹⁹ Stipulated Joint Claim Construction Chart, Ex. A at 1.

²⁰ See Decl. of C. Wargo at ¶ 7 (Starr Decl., Ex. F).

1 GLOSSARY 31 (2005) (same). Hence, Honeywell proposes to construe this term as
 2 “the aircraft component known as the flight data acquisition unit.”²¹ The ‘990
 3 specification supports Honeywell’s constructions. In addition to repeatedly describing
 4 “flight data” as a particular set of parameters, it refers to a “data acquisition unit” as
 5 including a “DFDAU” processor:

6 The *data acquisition unit 20 includes a digital flight data*
 7 *acquisition unit (DFDAU) processor 22*, which includes a storage
 8 media for storing flight data in a digital format. The *DFDAU*
 9 *processor 22 receives signals from sensors 24 which sense*
 10 *parameters such as air speed, altitude, vertical acceleration,*
 11 *heading, time, etc.*

12 (‘990 col.3 ll.10-15.) Teledyne also recognized the proper meaning of “data
 13 acquisition unit” in its representations to the U.K. Patent Office; contrary to the
 14 definition it now poses, “data acquisition unit” cannot encompass “avionics and/or
 15 electronic engine control line replaceable units.”²²

16 “Flight operations center”²³ is also a term of art, referring to the base of flight
 17 operations for the airline or aircraft operator.²⁴ Teledyne’s use of this term in the
 18 industry supports Honeywell’s construction. Thus, touting the alleged reduction to
 19 practice of the ‘990 patent, Teledyne stated that “GroundLink allows aircraft to
 20 *immediately transmit flight data information to an airline’s home base when*
 21

22
 23 ²¹ Stipulated Joint Claim Construction Chart, Ex. A at 1.

24 ²² File History of U.K. Patent Application No. 0323990.2, *supra*, note 19 at 2

25 ²³ ‘990 claims 20-21, 46-47.

26 ²⁴ See Starr Decl., Ex. F at ¶ 8; see also Dept. of the Army, Army Reg. 95-2 at 56 (August 10,
 27 1990) (defining Air Traffic Control Facility as “A facility (including personnel, equipment, and
 28 structures) that provides ATC service. Included are ATC tower, Army approach control, Army radar
 approach control ground controlled approach, *flight operations center*, flight coordination center, or
 fixed base flight following.”).

1 *touching down* at virtually any airport.”²⁵ Teledyne’s alternate construction²⁶,
 2 contrary to this clear usage in the art—including its own non-litigation usage of this
 3 term—improperly seeks to expand upon that meaning by defining the term to
 4 encompass *any* location that contains or communicates with a data reception unit.

5 **3. The Patent Expressly Defines Cellular Infrastructure**²⁷

6 “Cellular infrastructure” is also a technical term requiring construction.
 7 Honeywell proposes the following: “a voice/data network for mobile radio
 8 communication in a licensed frequency band, organized as a system of cells including
 9 a base station transceiver subsystem connected to a base station controller.”²⁸ The
 10 ‘990 specification expressly and clearly articulates this definition:

11 The cellular infrastructure 14 includes an antenna 40, which is
 12 within free-space radiating range of the aircraft 12. The antenna 40
 13 is connected to a base station transceiver subsystem 42. The
 14 subsystem 42 is connected to a base station controller 44... .

15 (‘990 col.3 ll.42-50.) Figures 2 and 11—the only figures depicting the “cellular
 16 infrastructure”—likewise define it as a box circumscribing the antenna 40, base
 17 station transceiver subsystem 42, and base station controller 44.

18 Technical dictionaries also support Honeywell’s construction. *See, e.g.*,
 19 MODERN DICTIONARY OF ELECS. 145 (7th ed. 1999) (defining cellular system as a
 20 “mobile telephone system that divides large service areas into small cells, each with
 21 its own low power transmitter. A telephone call is switched by computers from one
 22 transmitter to the next . . . as a vehicle moves from cell to cell.”)

23
 24 ²⁵ Teledyne Techs. Inc., *Teledyne Controls Announces Successful Launch of Wireless Groundlink*,
 25 Sept. 5, 2001, <http://www.teledyne.com/news/groundlink.asp> (Starr Decl. Ex. G); *see also* Starr
 Decl., Ex. G at ¶ 8.

26 ²⁶ Stipulated Joint Claim Construction Chart, Ex. A at 11.

27 ²⁷ ‘990 all independent claims (claim 18 uses “cellular communications infrastructure”).

28 ²⁸ Stipulated Joint Claim Construction Chart, Ex. A at 2.

Teledyne’s proposed alternative definition—“a cellular voice and/or data network that uses carrier frequencies in the licensed frequency range”²⁹—begs the question by incorporating “cellular” into the definition. “Cellular” is the very word that has no ordinary meaning and so “deprive[s] the claim of clarity” as to require resort to the other intrinsic evidence for a definite meaning. *CCS Fitness, Inc.*, 288 F.3d at 1366.

4. **“Serial Card” and a “Plurality of Cell Channels in Communication With Said Serial Card” Require Multiple Cellular Modems**³⁰

“Serial card” and “plurality of cell channels in communication with said serial card” are also technical terms that require definition. Specifically, “serial card” should be defined as “a circuit board with I/O interfaces that each transmit data to or from a peripheral device one bit at a time.”³¹ “Plurality of cell channels in communication with said serial card” should be defined such that “more than one physical, over-the-air channels to the cellular infrastructure are each attached to an I/O port of said serial card, allowing the cell channels to transmit data simultaneously and thus in parallel.”³² The claim language itself supports these definitions, for it confirms that the serial card must provide the ability to transmit on multiple cellular channels: “a plurality of cell channels in communication with said serial card, said cell channels for transmitting data. . .” (‘990 claim 8.)

The specification, too, supports these definitions. According to it, a purported advantage of the claimed invention was the ability to “transmit data over multiple parallel channels to achieve the *necessary transmission bandwidth and achieve a low*

²⁹ *Id.*

³⁰ ‘990 claims 8, 14.

³¹ Stipulated Joint Claim Construction Chart, Ex. A at 3.

³² *Id.* at 4.

1 *data transmission time.*” (‘990 col.2 ll.9-12.) Moreover, the use of a multi-port serial
2 card is the only method the ‘990 patent discloses to accomplish this:

3 Each I/O port of the card 34 is attached to a cell channel which can
4 open, sustain, and close a physical, over-the-air channel *to the*
5 *cellular infrastructure* 14. The cell channels 36 can *transmit*
6 *simultaneously* and can thus *transmit data in parallel*.

7 (‘990 col.3 ll.33-37.)

8 The relevant technical dictionaries also support Honeywell’s proposed
9 constructions. *See, e.g.,* THE AUTHORITATIVE DICTIONARY OF IEEE STANDARD TERMS
10 144, 1029 (2000) (defines *serial interface* as “[a]n interface that transmits data bit by
11 bit rather than in whole bytes” and *card* as “a generic term used for a circuit board.”);
12 *accord, MODERN DICTIONARY OF ELECS., supra*, at 98, 681.

13 5. “Means for Transmitting”³³

14 This means-plus-function claim term is used in claim 15 to describe
15 transmission of data over multiple parallel cell channels and should be construed
16 accordingly. “Means” claim language presumptively indicates a means-plus-function-
17 format, with the disclosed structure in the specification that is required to perform the
18 recited means for achieving the claimed function (in this case, transmitting), and its
19 equivalent, becoming part of the literal claim scope. *See Biomedino, LLC v. Waters*
20 *Techs. Corp.*, 490 F.3d 946, 950 (Fed. Cir. 2007). Here, there is no basis to deviate
21 from the means-plus-function presumption, particularly given that the claim itself
22 recites no structure for performing the transmission function. Moreover, because
23 transmission of flight data from a data acquisition unit via a cellular infrastructure is a
24 computer-implemented function, (‘990 col.3 ll.22-41), the corresponding structure is
25 the algorithm disclosed in the specification. *See Harris Corp. v. Ericsson Inc.*, 417
26 F.3d 1241, 1249 (Fed. Cir. 2005) (“the corresponding structure for a § 112 ¶ 6 claim
27

28 ³³ ‘990 claim 15.

1 for a computer-implemented function is the algorithm disclosed in the specification.”)

2 The function of claim 15 should be defined as: transmitting flight data from the
3 data acquisition unit via a cellular infrastructure after the aircraft has landed. The
4 corresponding structure and algorithm are:

5 Upon receipt of the weight-on-wheels signal from the landing gear
6 of the aircraft 12, the processor 32 prepares the flight data for
7 transmission and transmits the data to a multi-port serial card 34.

8 Each I/O port of the card 34 is attached to a cell channel which can
9 open, sustain, and close a physical, over-the-air channel to the
10 cellular infrastructure 14. The cell channels 36 can transmit
11 simultaneously and can thus transmit data in parallel.

12 (‘990 col.3, ll.31-42.) The Court should reject Teledyne’s proposed identification of a
13 bare bones structure because it disregards the disclosure’s sole embodiment of this
14 function (“a multi-port serial card” in which “[e]ach I/O port of the card is attached to
15 a cell channel...,” (*Id.*), and does not include the disclosure’s algorithm for data
16 transmission (creation of data threads; simultaneous, parallel transmission of threads
17 over multiple cell channels, (*Id.* at col.4 l.57 - col.5 l.40). These structures and steps
18 are part of the literal claim scope. *See Harris*, 417 F.3d at 1249.

19 **6. Claim 25 (“Threads”)**

20 Claim 25 is a multi-step method claim where the step of “processing said flight
21 data to prepare said data for transmission” includes ten computer processing sub-steps.
22 (‘990 col.8 ll.45-67.) This claim presents two construction issues: first, whether the
23 claim is indefinite and second, what are the meanings of “data thread” and “threads
24 are active.” Regarding the first issue, the claim is indefinite because sub-step 6
25 (“starting a primary data thread”—a “transmitting” step by Teledyne’s own
26 admission) cannot be reconciled with the “processing” sub-steps of which it is a part.
27 “Data thread” (as distinct from “thread”) is not a term that bears particular meaning to
28 one skilled in the art, and the ‘990 specification uses it to describe the transmitting (as

1 distinct from processing) step: “The packets are then placed in a packet queue. The
 2 packets are then ready for *transmission as a fixed number of threads*, corresponding
 3 to the number of cell channels 36.” (‘990 col.4 ll.64-67.) Indiscriminately mixing the
 4 “processing” and “transmitting” steps results in the transmission of data in the
 5 “transmitting” step that has already been transmitted in the “processing” step, and
 6 cannot be understood by one skilled in the art. *See, e.g., Union Pac. Res. Co. v.*
 7 *Chesapeake Energy Corp.*, 236 F.3d 684, 692 (2001) (in method for determining
 8 location of borehole relative to strata, step of “comparing” certain information held
 9 indefinite because patent does not explain that “comparing” refers to a complex
 10 “correlation” step, and “‘comparing’ could undoubtedly have other meanings to a
 11 person of skill in the art”); *compare* ‘990 col.8 ll.50-51 *with id.* at col.8 ll.52-53.

12 Regarding the second issue, Honeywell’s proposed constructions embrace the
 13 claim language, specification, and understanding of one skilled in the art as to the
 14 meanings of “data thread” and “threads are active.” In the art of computer processing
 15 (e.g., for use in avionics), the word “thread” is an abstract construct used to describe
 16 not data, but a “sequential control of flow within a process.” The IEEE DICTIONARY
 17 OF ELEC. AND ELEC. TERMS 1108 (6th Ed. 1996) (“Thread ... (4) A single sequential
 18 flow of control within a process.”) On the other hand, because the claim phrase “data
 19 thread” does not have meaning to a person skilled in the art, it must be construed as
 20 describing a thread in the particular context disclosed in the specification. Thus, “data
 21 thread” is “a single sequential flow of control within a process for conveying data
 22 packets to the multi-port serial card for transmission via one of a fixed number of
 23 corresponding cell channels,”³⁴ as disclosed in the specification. Teledyne has not
 24 provided Honeywell with a proposed construction for this claim phrase.

25 “Threads are active” uses the plural form of “thread” (“determining if *any*
 26 *threads are active*”) and should therefore be construed as “more than one thread is

27
 28 ³⁴ Starr Decl., Ex. B at 21-22.

active.”³⁵ See WEBSTER’S NEW TWENTIETH CENTURY DICTIONARY, UNABRIDGED 83 (2nd ed. 1979) (defining “any” as “1. one (no matter which) *of more than two*; as *any* boy may go. 2. some (no matter how much, how many, or what kind); as, do you have *any apples?*”). Moreover, the patentee understood how to choose between the singular and plural forms of “thread” and chose to use the plural form in claim 25. (Compare ‘990 col.4 l.67 - col.5 l.1 (“data thread is started”) with *id.* at col.5 ll.4-5 (“threads are active”).) Teledyne’s proposal—“if there are any data packets that have not been transmitted or have been transmitted and dropped”³⁶—cannot be correct because it equates “threads” with “packets” when the ‘990 patent makes it clear that threads are not packets, but *convey* packets: the peer-to-peer protocol “threads convey the packets to the multi-port serial card 34 for transmission to the backbone 66 of the Internet 45 via the cell channels.” (‘990 col.4 ll.30-32.)

B. The ‘152 Patent³⁷

Honeywell’s ‘152 patent is directed to a system that selects among various communication mediums used to request and retrieve data information from a ground source while aboard a vehicle, such as an aircraft. For every disputed term of the ‘152 patent, Teledyne proposes definitions that unduly narrow the claim terms, adding limitations that are not even found in the specification, much less in the claims. As discussed below, in each instance the specification actually contradicts rather than supports Teledyne’s attempts to impose additional limitations on Honeywell’s claims. Teledyne’s proposed definitions should thus be rejected in favor of Honeywell’s.

³⁵ Starr Decl., Ex. B at 23.

³⁶ Starr Decl., Ex. H (11/7/2007 Letter from J. Paunovich to E. Starr confirming Teledyne’s decision to assert claim 25 after the parties held their final meet-and-confer to prepare the Stipulated Joint Claim Construction Chart).

³⁷ See *supra* note 1, (listing the asserted claims of the ‘152 patent). Starr Decl., Exs. I and J contain, respectively, the ‘152 patent with the disputed claim terms highlighted and Honeywell’s proposed claim constructions for the ‘152 patent with citations to the intrinsic record and to extrinsic evidence.

1. First and Second Communication Mediums³⁸

These general terms broadly refer, respectively, to the communications mediums used to transmit (1) data requests to the data source, and (2) the requested data to the receiver. They do not require definition beyond their plain meaning. As the specification makes clear, the communications mediums may comprise any suitable media for transmitting data requests from transmission unit to the data source:

[T]he first communication medium [] may comprise *any* suitable medium. . . [and] may comprise multiple media, which may be used individually or in any appropriate combination to transfer requests to the data source. . . . [S]econd communication medium 210 may comprise *any* medium, plurality or combination of media capable of transmitting information from the data source 102 to the receiver.

(‘152 col.8 ll.4-6; *see id.* at col.3 ll.17-19). Moreover, the patentee clearly defined the first and second communication mediums as *not* being mutually exclusive. (‘152 col.2 ll.37-38 (“the first and second communication media 208, 210 *may be the same or different media, or separate channels of the same medium.*”).) On the other hand, Teledyne’s proposed construction—“a manner of communication defined in the third [/fourth] element of claim 1 (sub-paragraphs one and two) that is different from the second [/first] communication medium”³⁹—disregards the specification’s explanation of these terms by requiring that the two mediums be different.

2. Aeronautical Satellite System⁴⁰ / Direct Broadcast Satellite⁴¹

“Aeronautical satellite system” should be defined as “at least one satellite

³⁸ ‘152 claims 1, 10.

³⁹ Stipulated Joint Claim Construction Chart, Ex. A at 17-18.

⁴⁰ ‘152 claims 1, 5-7, 10-11.

⁴¹ The related terms “direct broadcast satellite,” “direct broadcasting satellite,” and “broadcast” appear in all of the independent claims of the ‘152 patent.

1 configured to received data request signals from the transmission unit and forward or
2 transmit the signals to a ground earth station.” “Direct Broadcast Satellite” or “DBS”
3 should be defined as “a satellite that facilitates access to greater bandwidth than
4 reliance solely on the telephone system and affords relatively high data rates from the
5 data source to the receiver.”

6 As with the first and second communication mediums (which are closely related
7 to the “aeronautical satellite system” and the DBS, respectively), the satellite systems
8 defined by these terms are not mutually exclusive. For example, the specification
9 teaches that the “*aeronautical satellite system*” may be “*any* [] suitable satellite
10 communication system. . .” that is “adapted to transmit data information requests from
11 said satellite data unit to said ground station” which may be the downlink function of
12 the “first communications medium.” (‘152 claim 1 & col.8 ll.25-33.) The
13 specification defines “*direct broadcast satellite*” as well, notably, in terms of the
14 uplink function of the “second communications medium”:

15 Preferably, receiver 106 is configured to receive information
16 signals from a satellite system, such as, for example, a direct
17 broadcast satellite (DBS) system 318, extract the relevant
18 information from the received signal, and route the information to
19 the appropriate user. Accordingly, by broadcasting requested
20 information to the receiver 106 via satellite system 318, a high data
21 transfer rate, e.g., 30 Mbps, that is significantly cheaper than
22 conventional techniques may be realized.

23 (‘152 col.4 ll.18-26.) The specification therefore does not preclude an “aeronautical
24 satellite system” from being a DBS. To the contrary, the specification makes clear
25 that the DBS systems are a subset of the larger “aeronautical satellite system,” with
26 the key attribute of affording a relatively high data transfer rates from the data source
27 to the receiver. (‘152 col.3 ll.11-12.) Thus, Teledyne’s proposed construction—“a
28 satellite that is not an aeronautical satellite, which broadcasts the same transmissions

1 directly to all end-users and cannot receive transmissions from end-users”⁴²—is
 2 directly at odds with the specification and should be rejected.

3 **3. Terms That Should Be Given Their Plain Meaning**⁴³

4 Teledyne has identified several additional terms for construction that Honeywell
 5 contends should be given their plain and ordinary meanings. These terms include:
 6 “data source,” “information request system,” “satellite data unit,” “radio frequency
 7 unit,” “selecting,” “selection system,” “wireless LAN system,” “radio frequency
 8 system,” and “voice channel system.” For each of these, the Court should reject
 9 Teledyne’s improper attempts to add nonexistent limitations to the claim terms.⁴⁴

10 **C. The ‘468 Patent** ⁴⁵

11 The ‘468 patent is directed to providing and verifying the successful loading of
 12 data updates to aircraft components, such as a navigation database, via a system server
 13 and a vehicle server. Teledyne seeks to construe ten terms throughout the asserted
 14 claims, while Honeywell would accord all but two of these their ordinary meanings.
 15 The claim language is clear, the plain meanings would be known by one of skill in the
 16 art, and the specification and prosecution history do not alter these meanings.

17 **1. “Vehicle Server” & “Component”** ⁴⁶

18 Honeywell’s proposed construction of “vehicle server”—“any hardware or
 19 software device that is capable of receiving data updates from the system server and
 20

21 ⁴² Stipulated Joint Claim Construction Chart, Ex. A at 18-19.

22 ⁴³ ‘152 claims 1, 3, 10 and 11 (“data source”); claims 1, 3, 4, 5, 6, 10 and 11 (“information
 23 request system”); claims 1, 4, 7, 8 and 10 (“satellite data unit” and “radio frequency unit”); claim 6
 24 (“selecting,” “wireless LAN system,” “radio frequency system” and “voice channel system”) and
 25 claim 11 (selection system).

26 ⁴⁴ Stipulated Joint Claim Construction Chart, Ex. A at 16-26; Starr Decl. Ex. J.

27 ⁴⁵ *See supra* note 1 (listing the asserted claims of the ‘468 patent); Starr Decl., Exs. K and L
 28 contain, respectively, the ‘468 patent with the disputed claim terms highlighted and Honeywell’s
 proposed claim constructions for the ‘468 patent with citations to the intrinsic record and to extrinsic
 evidence

⁴⁶ ‘468 claims 1, 9 (vehicle server), 1 (component).

loading the updates in a component”⁴⁷—is how the patent defines the term: “Vehicle server 116 is *any hardware or software device* that is capable of receiving data updates from system server 102 and loading the updates in component.” (‘469 col.5 ll.19-22.) It is also consistent with how the term is understood by one of ordinary skill in the art. *See* THE AUTHORITATIVE DICTIONARY OF IEEE STANDARDS TERMS 1031 (7th ed. 2000) (defining “server” as “[t]he software component on one device that provides services for use by clients on the same or another device.”); MICROSOFT PRESS COMPUTER DICTIONARY 404 (3rd ed. 1997) (defining “server” as “[o]n the Internet or other network, a computer or program that responds to commands from a client.”). In contrast, Teledyne’s proposed definition—“*a hardware storage device* for use in a vehicle that is capable of receiving data updates from the system server and loading the data updates in a *component that is separate from the vehicle server*”⁴⁸—attempts to insert artificial limitations into a plainly defined and understood term.

Honeywell’s proposed construction of “component” as “any avionics or other aircraft device such as a flight management computer, flight management system, global positioning system, navigation computer or the like”⁴⁹ is also consistent with how the patent defines the term: “any avionics or other aircraft device such as a flight management computer (FMC), flight management system (FMS), global positioning system (GPS), navigation computer or the like.” (‘468 col.5 ll.46 – 49.) In contrast, Teledyne’s proposed construction—“a vehicle hardware device that is separate from the vehicle server and that receives data updates from the vehicle server and uses the data updates to perform a function”⁵⁰—unduly limits the “component” to separate

⁴⁷ Stipulated Joint Claim Construction Chart, Ex. A at 29.

⁴⁸ *Id.*

⁴⁹ *Id.* at 30.

⁵⁰ *Id.*

hardware devices performing particular functions, a limitation that is nowhere in the claim and directly contradicted by the specification's clear description of the component as including "any avionics or other aircraft device."

2. Terms That Should Be Given Their Plain Meaning⁵¹

Honeywell contends that the following terms from the '468 patent do not require construction: "system server," "data connection," "loading said data update from said vehicle server into a component at said vehicle," "verifying from said vehicle server to said system server via said data connection that said loading step completed successfully," "receiving a confirmation from said vehicle server via said data connection when said data update is successfully loaded," "digital storage medium," "operable to execute the method," and "at a pre-determined time." For each of the above terms, Teledyne's effort to add limitations to the claim language should be rejected. A few of these warrant specific mention.

The '468 specification contradicts Teledyne's effort to impose a limitation in the "verifying" and "receiving" steps of claims 1 and 9, respectively, that only "the vehicle server determines whether the load was successful."⁵² According to the specification, "When the load is complete, a . . . check . . . is executed by component 118 *or* vehicle server 116, as appropriate, to verify that the data update was properly loaded." ('468 col.9 ll.22-25.) Similarly, the plain meaning of "system server" accords with the specification's use of this term. *See e.g.*, '468 col.5 ll.25-29 ("The ARINC 763 network server system (NSS) description includes a common file server, data processing, mass storage and interface capabilities to a number of terminals connected via an onboard aircraft Local Area Network (LAN)"). But in its proposal,

⁵¹ '468 claims 1 and 9 ("system server"); claims 1, 2, 9 and 12 ("data connection"); claim 1 ("loading..." and "verifying..."); claim 9 ("receiving" and "at a pre-determined time"); claims 7, 13, and 15 ("digital storage medium" and "operable to execute the method").

⁵² Stipulated Joint Claim Construction Chart, Ex. A at 30, 32.

Teledyne adds the artificial limitation that it is a “remote hardware device.”⁵³

Finally, Teledyne’s construction of “at a pre-determined time” attempts to restrict this limitation to an update that is scheduled in at a specific time in advance⁵⁴ rather than, for example, based on a pre-determined condition or rule. But the specification states, “[t]ime of distribution to a particular vehicle may be determined by administrative program 106 in accordance with pre-determined rules based upon user inputs and data in database 104, for example, *or according to any other scheme.*” (‘468 col.6 ll.12-16.) Thus, Teledyne’s effort to narrow this term, too, should be rejected, and it should be accorded its plain meaning.

IV. CONCLUSION

For all of the foregoing reasons, Honeywell respectfully request that the Court enter an Order construing the disputed claim terms as indicated herein and in Honeywell’s portion of the Stipulated Joint Claim Construction Chart.

DATED: November 19, 2007

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⁵³ *Id.* at 29.

⁵⁴ *Id.* at 32.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing documents entitled **HONEYWELL'S MARKMAN OPENING BRIEF and [PROPOSED] ORDER** were filed electronically in compliance with Local Rule 5-4. As such, this notice was served on all counsel who have consented to electronic service pursuant to Local Rule 5-4.

/s/ Ephraim D. Starr

Ephraim D. Starr